

**THE INDIANA CIVIL RIGHTS COMMISSION
311 West Washington Street
Indianapolis, Indiana 46204**

**STATE OF INDIANA)
) SS
COUNTY OF MARION)**

**MIKE FLANAGAN,
Complainant,**

DOCKET NO. EMse79070872

vs.

**INDIANA VETERANS HOME,
Respondent.**

FINAL ORDER

On March 25, 1981, Kenneth W. Maher, Hearing Officer in the above cause, entered his Recommended Findings of Fact, Conclusions of Law and Order. Neither party has filed objections to those Recommended Findings, etc., within the ten (10) day period prescribed by IC 4-22-1-12 and 910 IAC 1-12-1.

Being duly advised in the premises, the Commission hereby adopts as its final Findings of Fact, Conclusions of Law and Order those recommended in the Hearing Officer's Recommended Findings of Fact, Conclusions of Law, and Order, which is attached hereto and incorporated by reference herein.

Dated: April 24, 1981

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RECOMMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-captioned cause was the subject of a public hearing held on February 2, 1981 before the undersigned Hearing Officer of the Indiana Civil Rights Commission ("ICRC"). Complainant was present and represented by counsel, Charles Webster, and Respondent was represented by counsel, Charles Webster, and Respondent was represented by counsel, Linley E. Pearson, Attorney General of Indiana by David Miller, Deputy Attorney General.

Having heard the evidence and considered the arguments and proposed decision of counsel, and being duly advised in the premises, the Hearing Officer hereby recommends the entry of the following Findings of Fact, Conclusions of Law and Order.

FINDINGS OF FACT

1. On July 27, 1979, Mike Flanagan, a male citizen of Indiana, filed a complaint with the Indiana Civil Rights Commission against the Indiana Veterans Home.

2. In the Complaint filed by Mike Flanagan, the Complainant alleged sex discrimination in employment.

3. In the Complainant's explanation of the alleged discrimination the Complainant, Mike Flanagan, stated in the Complaint:

a. That on July 9, 1979, he was denied employment;

b. That the reason given by Rhonda Brough, supervisor, was that the Respondent was not hiring, and

c. That the Complainant believed he was discriminated against him due to sex because on July 12, 1979 he saw a help wanted ad in the local newspaper and that as a result, he called the Indiana Veterans Home and was told that they needed help but on July 17, 1979 he was told by Rhonda Brough that to her knowledge they were not hiring.

4. The position for which the Complainant was applying for was that of a nurses-aide.

5. The Complainant, Mike Flanagan, had previously been employed by the Indiana Veterans Home as a nurses-aide.

6. On January 15, 16 and 17, 1979, the Complainant was suspended for poor attendance record.

7. On January 24, 1979, the Complainant, Mike Flanagan, was dismissed, effective as of February 10, 1979, for failure to return to work after said suspension.

8. The Complainant, Mike Flanagan, did not appeal his dismissal or otherwise raise "discrimination" as an issue.

9. On May 28, 1980, the Complainant, Mike Flanagan, reapplied for a nurses-aide position at the Indiana Veterans Home.

10. The Complainant presented evidence of a newspaper ad which appeared on July 12, 1979, which advertised openings at the Indiana Veterans Home.

11. The Complainant also presented evidence that on July 17, 1979, he was told by the Respondent, Indiana Veterans Home, that there were no positions open for nurses-aides.

12. The Respondent, Indiana Veterans Home, argued that it was possible for nurses-aid position to be filled by the time an ad appeared in the local newspaper.

13. The Respondent, Indiana Veterans Home, presented evidence of situations where a nurses-aid position had been filled prior to the newspaper advertisement in as much as it sometimes takes up to ten (10) days for an ad to appear after it is taken out.

14. The Complainant tried to show a similar situation where a female employee, Sandra Plumb, was also dismissed for attendance problems and later rehired.

15. The evidence presented at the Hearing clearly demonstrates that the two situations are not similar.

16. The Respondent, Indiana Veterans Home, presented evidence which showed that Sandra Plumb had a superior performance record than the Complainant Mike Flanagan.

17. The Respondent, Indiana Veterans Home, showed that Sandra Plumb had a score of 91 on her eligibility test for nurses-aid position, while Complainant, Mike Flanagan, had a score of only 73.

18. The evidence also showed that the attendance problems of Sandra Plumb were due to personal reasons whereas Complainant's attendance problems were due to oversleeping and transportation.

19. The evidence showed that although the Respondent attempted to solve Complainant's transportation problems, the Respondent was not under an obligation to furnish transportation to and from work as a condition of employment.

20. The evidence further showed that Sandra Plumb always notified the Respondent when failing to report to work whereas the Complainant would not always notify the Respondent when he failed to report to work.

21. Although the Complainant testified that he did not have a phone, there was also testimony that Complainant's parents lived a short distance from Complainant and that his parents had a telephone.

22. The Respondent further testified that in order to be hired, or rehired, for a merit position, the applicant must first take a test and be placed on an eligibility list, although this requirement was apparently suspended when no eligibility list was available.

23. The evidence does not show that any position were filled by persons not on an eligibility list from July 1979 to October 1979.

24. The evidence showed that the Complainant did take a test and was placed on an eligibility list, which appeared in October 1979.

25. The evidence showed that there were ten nurses-aid positions available in October 1979.

26. The evidence further showed that there were sixty-two (62) names placed on four (4) eligibility lists for the nurses-aid positions.

27. The evidence showed that the Complainant, Mike Flanagan, was the last name appearing on the eligibility lists because of all the sixty-two (62) applicants, the Complainant's score of 73 was the lowest score.

28. The evidence further showed that of all the sixty-two (62) applicants, the Complainant had the least credentials or qualifications.

29. The evidence further showed that the following people were hired for the ten (10) available positions:

- (1) Vera Minick – Female
- (2) Helen Forrester – Female
- (3) James Patton – Male
- (4) Pamela McRoy - Female
- (5) Diane Hageman – Female
- (6) Helen Tingley – Female
- (7) Deb Ekrsam – Female
- (8) Jacqueline Fagan – Female
- (9) Carol Mikels – Female
- (10) James Graves – Male

30. Of the above ten (10) hired, 20% were male.

31. The evidence presented by the Respondent showed that all ten (10) not only had higher test scores than the Complainant but better qualifications as well.

32. The Respondent did not discriminate against the Complainant based upon sex but imply did not rehire the Complainant because it desired to hire the most qualified for the nurses-aid positions and in fact, the ten (10) that were hired had higher test scores and better credentials and were, in every way, more qualified.
33. The Respondent had no desire to rehire Complainant because of his past work record and poor attendance.
34. The Respondent testified that when the Complainant inquired about a job based upon a newspaper ad, the job had been filled and besides, the Respondent did not wish to rehire the Complainant based upon the above mentioned attendance problems and past work record, low test scores and lack of impressive qualifications.
35. The Respondent rehired Sandra Plumb because of her qualifications and high test score and assurances that her personal problems were resolved so as not to interfere with her attendance.
36. The evidence presented not only fails to substantiate Complainant's claim of sex discrimination but also refutes that claim.
37. Because of the absence of an unlawful discriminatory practice, Complainant suffered no damages cognizable by IC 22-9-1.
38. Any Conclusion of Law which should have been deemed a Finding of Fact is hereby adopted as such.

CONCLUSIONS OF LAW

1. Respondent Indiana Veterans Home is a "person" as that term is defined in IC 22-9-1-3(a) and an "employer" as that term is defined in IC 22-9-1-3(h).
2. ICRC has jurisdiction over the parties and the subject matter of this cause.
3. ICRC has no jurisdiction to decide any issue raised at hearing concerning alleged discriminatory treatment of Complainant in January 1979 since no complaint was filed within 90 days of such treatment. See IC 22-9-1-3(o).

4. Respondent did not commit a discriminatory practice when it failed to reemploy Complainant because of his prior work record and relative lack of competitive qualification and not because of his sex.
5. Any Finding of Fact which should have been deemed a Conclusion of Law is hereby adopted as such.

ORDER

The Complaint of Complainant, Mike Flanagan shall be dismissed for reasons aforestated.

Dated: March 25, 1981